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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,823	02/20/2002	Dennis Colditz	24-NS-120748	7483

23465 7590 05/27/2003

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EXAMINER
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PALABRICA, RICARDO J

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 05/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/683,823

Applicant(s)

COLDITZ ET AL.

Examiner

Rick Palabrica

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4-13,16-24 and 27-41 is/are pending in the application.
- 4a) Of the above claim(s) 9,10,19,20,22,29,30,32 and 34-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-8,11-13,16-18,21,23,24,27,28,31 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's amendment in Paper No. 10, which revises claims 1, 13 and 24, and adds new claims 34-41, is acknowledged.
2. As to the new claims in said amendment, claims 34-41 are directed to an invention that is distinct from the invention originally claimed. The original claims pertain to a servicing platform that is completely assembled and positioned above a reactor pressure vessel. The new claims pertain to a completely different species of a servicing platform because it comprises an unspecified number and type of modular units that are first assembled to form a working platform before such assembled structure is positioned above a reactor pressure vessel. The new invention is distinct and restrictable from the originally claimed invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits.

Accordingly, claims 34-41 are withdrawn from consideration as being directed to a nonelected invention. See 37 CFR 1.142(b) and MPEP 821.03.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4, 7, 8, 11-13, 16-18, 21, 23-24, 27, 28, 31 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Gregson (U.S. 3,393,026 who discloses arrangements for refueling of a nuclear reactor.

The apparatus claims are contain statements that are essentially statements of intended or desired use. For example, the statement in claim 1 starting with “for a nuclear reactor” and ending with “refueling floor”. This and other statements of intended use do not serve to patently distinguish the claimed structure over that of the reference, as long as the structure of the cited references is capable of performing the intended use. See MPEP 2111-2115.

See also MPEP 2114 that states:

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531.

[A]pparatus claims cover what a device is, not what a device does.”  
Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525,1528.

As set forth in MPEP 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

As shown below, the structure in the cited reference is capable of being used in the same manner and for the intended or desired use as the claimed invention.

Gregson discloses in Figs. 1-5 a reactor servicing platform 14 for a nuclear reactor of the steam-generating heavy water moderated type, comprising a reactor access opening sized to permit access to an enclosure containing a reactor core (see column 3, lines 47+). This platform has a floor that is supported by a support structure 38 (see Fig. 3). Note that the enclosure is the pressure vessel for the reactor designed to withstanding super-atmospheric steam pressures (see column 3, lines 50+). There is one auxiliary platform 17 extending into said access opening, said auxiliary platform movable along a perimeter of said access opening (e.g., see Fig. 2). The refueling machine 15 is a lifting device.

The rotatable platform 14 is a disc-shaped slab of concrete carries the refueling machine 15 and weighs upwards of 500 tons. It is inherent that this concrete platform be steel-reinforced to provide structural strength and allow the platform to support its own weight and the weight of the refueling machine. Such steel-reinforcement for the platform is inherently provided by a frame of interconnected reinforcing beams.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1, 4, 7, 8, 11-13, 16-18, 21, 23-24, 27, 28, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregson in view of Goto et al. (U.S. 5,351,277).

As stated in section 3 above, it is inherent that the disc shape concrete slab in Gregson's invention is steel-reinforced structure comprising a frame of reinforcing beams. If this is not evident, then Goto et al. teaches construction of a top slab of a steel-reinforced, concrete nuclear container. Goto et al. show in Figs. 4, 6 and 7 the concrete structure comprising a frame with interconnected beams (8, 9).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus, as disclosed by Gregson, to construct the concrete platform with a frame of interconnected steel reinforcing beams, to gain the advantages thereof (i.e., high structural strength), because such modification is no more than the use of well-known expedient within the nuclear art.

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being obvious over Gregson alone or Gregson in view of Goto et al. (U.S. 5,351,277). Either one of Gregson or the combination of Gregson and Goto et al. discloses the applicant's claims except for a safety rail around a perimeter of the access opening and around the perimeter of the floor.

The use of a protective rail around rotating structures is a well-known industrial safety measure. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus, as disclosed by

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either one of Gregson or the combination of Gregson and Goto et al., to include a safety rail around a perimeter of the access opening and around the perimeter of the floor, to gain the advantages thereof (i.e., enhanced worker protection), because such modification is no more than the use of a well-known worker protection measure in the industrial safety art.

6. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregson alone or Gregson in view of Goto et al. (U.S. 5,351,277) in view of OSHA regulations.

As stated in section 5 above, the use of a protective rail around rotating structures is a well-known industrial safety measure. If this is not evident, then consider Occupational Health and Safety Regulations (OSHA), e.g., Parts 11 (Fall Protection), 12 (Tools, Machinery and Equipment) and 13 (Ladders, Scaffolds and Temporary Work Platforms). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus, as disclosed by either one of Gregson or the combination of Gregson and Goto et al., by OSHA Regulations, to include a safety rail around a perimeter of the access opening and around the perimeter of the floor, to gain the advantages thereof (i.e., enhanced worker protection), because such modification is no more than the use of a well-known worker protection measure in the industrial safety art.



***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 703-306-5756. The examiner can normally be reached on 7:00-4:30, Mon-Fri; 1st Friday off.

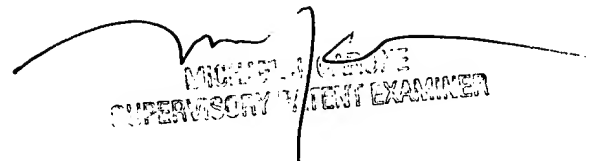
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, telephone number is 703-308-1113.

RJP

May 19, 2003

  
MINISTER / CHIEF  
SUPERVISORY / TEST EXAMINER